DOCUMENT RESUME

ED 189 241 UD 020 748

AUTHOR Days, Drew S., III
TITLE Remarks by Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, Before the American Bar Association National Institute, Washington Hilton (Washington, D.C., on May 22, 1980).
INSTITUTION Department of Justice, Washington, D.C. Civil Rights Div.
PUB DATE 22 May 80
NOTE 14p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Affirmative Action; Equal Education; Equal Opportunities (Jobs); *Females; *Minority Groups; *Racial Discrimination; *Sex Discrimination

ABSTRACT

In this speech the Assistant Attorney General for the Civil Rights Division of the Department of Justice discusses the impact of racial and sex discrimination on the nation. The author reflects on the high costs of discrimination, financially and socially, in terms of riot damage, underutilization of the work force, crime, and poor education. In discussing the Federal government's recent affirmative action efforts, he notes that, despite equal opportunity legislation, institutional discriminatory barriers still exist and exacerbate problems of inequality. The author delineates the present administration's goals for affirmative action: (1) a cessation of discriminatory practices, (2) recruitment programs designed to increase pools of eligible minorities and women, (3) replacement of non-valid job related tests with valid devices, (4) increased minority and female hiring and promotion, and (5) back pay for victims of past discrimination. The author concludes with a call for creativity in the implementation of affirmative action and education of the American public about the costs of discrimination. (MK)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

JUN 1 0 1980

Department of Justice

ED189241

REMARKS

BY

DREW S. DAYS III
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE

AMERICAN BAR ASSOCIATION
NATIONAL INSTITUTE

WASHINGTON HILTON
WASHINGTON, D.C.

ON

MAY 22, 1980

UD020748

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

We have just witnessed, in Miami, in 1980, the worst race riot in this country in 10 years. After the insurance claims adjustors complete their work, we may discover that this riot was one of the most costly in recent memory. As a result of the events of last weekend, we are the losers: we lost many lives, millions of dollars from fire damage, many dollars in lost revenue, and most of all, we lost hope.

The loss of hope over a jury verdict acquitting four white police officers of the beating death of a black insurance man is only one part of the larger picture. The big picture tells us that while the economic situation among most whites has improved since 1975, this has not been true for many segments of the black community. According to the National Urban League, the income gap between black and white families continues to widen. The Urban League studies tell us that inflation disproportionately erodes the purchasing power of black families. For example, the real income of white families increased between 1975 and 1977.

AT THE SAME TIME, THE REAL INCOME OF BLACK FAMILIES DECLINED. IN ADDITION, THE JOBLESS GAP BETWEEN BLACKS AND WHITES CONTINUES TO WIDEN. AND WHITE HIGH SCHOOL DROPOUTS STILL HAVE ABOUT THE SAME JOBLESS RATES AS BLACK COLLEGE GRADUATES.

DESPITE THE PLETHORA OF FEDERAL LAWS ENACTED IN THE PAST DECADE, RACIAL AND SEX DISCRIMINATION CONTINUE TO TOUCH A LARGE SEGMENT OF OUR POPULATION. MOREOVER, DISCRIMINATION HAS NOT BEEN CONFINED TO A SINGLE MINORITY GROUP, BUT AFFECTS WOMEN, HISPANICS, NATIVE AMERICANS, ASIAN-AMERICANS AND INSTITUTIONALIZED PERSONS. FOR EXAMPLE, AMERICAN INDIANS HAVE THE LOWEST INCOME OF ANY GROUP IN AMERICA, AND THEIR UNEMPLOYMENT RATE IS 3.6 TIMES THE NATIONAL AVERAGE. ANOTHER EXAMPLE: WHILE SPANISH-SURNAMED AMERICANS INCREASED THEIR PARTICIPATION IN THE WORK FORCE FROM 1966 TO 1976, THE GAINS WERE MADE PRIMARILY IN LAW PAYING BLUE COLLAR AND SERVICE WORKER POSITIONS.

A STUDY COMMISSIONED BY THE INSTITUTE FOR RESEARCH ON POVERTY AT THE UNIVERSITY OF WISCONSIN CONCLUDED THAT THE EARNINGS OF BLACK MALES WOULD INCREASE 26 PERCENT TO 35 PERCENT IF

LABOR MARKET DISCRIMINATION WERE ELIMINATED. A SIMILAR STUDY AT THE SAME INSTITUTE CONCLUDED THAT ENFORCEMENT OF SEX DISCRIMINATION CHARGES UNDER TITLE VII REDUCED THE MALE/FEMALE EARNINGS DIFFERENTIAL BETWEEN 1967 AND 1974 BY ABOUT 7 PERCENTAGE POINTS OVERALL AND BY ABOUT 14 PERCENTAGE POINTS IN THE PRIVATE SECTOR.

IT HAS BEEN OBVIOUS FOR SOME TIME, THEN, THAT THE DISPARATE EARNING POTENTIAL OF BLACKS AND WHITES, HISPANICS AND ANGLOS, MALES AND FEMALES IS DUE IN LARGE PART TO RACIAL AND SEXUAL DISCRIMINATION. WHAT MIAMI MAKES EVEN MORE OBVIOUS IS JUST HOW COSTLY THAT DISCRIMINATION IS.

IN FACT, THE COSTS OF THAT DISCRIMINATION ARE TREMENDOUS. DISCRIMINATION IN SCHOOLS MEANS THAT THE TAXPAYERS PAY TO EDUCATE A LARGE PART OF OUR POPULATION IN PUBLIC SCHOOLS WHO GRADUATE WITHOUT BEING ABLE TO READ AND WRITE. RETURNING ONCE AGAIN TO THE RECENT EVENTS IN MIAMI, THE STATE SCHOOL SYSTEM OF WHICH MIAMI IS A PART WAS OFFICIALLY SEGREGATED UNTIL 1971. A FEDERAL DISTRICT JUDGE HAS FOUND THAT FLORIDA OPERATED A DUAL SCHOOL SYSTEM UNTIL 1970-71. AND THE EFFECTS OF THAT SEGREGATION

ARE VERY COSTLY.

FOR EXAMPLE, THE TAXPAYERS IN FLORIDA ARE PAYING FOR THE ADMINISTRATION OF A TEST, A SEPARATE PROCEDURE FROM TESTING WHAT IS ACTUALLY TAUGHT IN HIGH SCHOOL COURSES, THAT SUPPOSEDLY IDENTIFIES FUNCTIONAL LITERACY. RIGHT NOW THERE IS A CLASS ACTION SUIT BEFORE THE FIFTH CIRCUIT ON BEHALF OF FLORIDA PUBLIC HIGH SCHOOL STUDENTS CHALLENGING THIS TEST WHICH THEY MUST PASS TO GRADUATE. AFTER THE FIRST THREE TIMES THE TEST WAS GIVEN, 20 PERCENT OF BLACKS, COMPARED TO 1.9 PERCENT OF WHITES, WERE UNABLE TO PASS THE TEST ON THREE ATTEMPTS. PLAINTIFFS WON A FOUR-YEAR INJUNCTION FROM THE UNITED STATES DISTRICT COURT IN TAMPA IN PART BECAUSE THE DISPARATE RESULTS HAD NOT BEEN PROVEN BY THE DEFENDANTS TO BE UNRELATED TO FLORIDA'S DUAL SCHOOL SYSTEM.

HOW MUCH DID FLORIDA PAY TO DEVELOP AND ADMINISTER THIS STATEWIDE TEST? AND HOW MUCH DO WE ALL PAY WHEN A SUBSTANTIAL NUMBER OF OUR YOUNG PEOPLE, AS A RESULT OF THE CONTINUING EFFECTS OF THE PAST DUAL SCHOOL SYSTEM, ARE NOT TAUGHT THE BASIC SKILLS NEEDED TO LIVE IN AND INTERPRET THE

WORLD AROUND THEM. OR WHEN THOSE THAT DO MASTER THE BASIC SKILLS, AND DO ATTEND COLLEGE, OFTEN A PUBLIC COLLEGE OR UNIVERSITY, CAN ONLY FIND WORK TO THE SAME EXTENT AS IF THEY HAD DROPPED OUT OF HIGH SCHOOL?

ONE OF THE MOST APPALLING STATISTICS I HAVE COME ACROSS RECENTLY IS THAT THERE ARE MORE BLACK MEN BETWEEN THE AGES OF 18 AND 22 IN PRISON, THAN IN COLLEGE. HOW MUCH ARE WE PAYING TO KEEP THESE PRISONERS IN INSTITUTIONS? THE $10,000 PER YEAR WHICH THE FEDERAL SYSTEM SPENDS PER PRISONER COULD CERTAINLY PAY FOR AN EQUIVALENT YEAR IN COLLEGE. AND THE MONEY SPENT TO INCARCERATE YOUNG OFFENDERS IS OFTEN NOT ENOUGH TO PROVIDE DECENT LIVING CONDITIONS. THE CONDITIONS OF CONFINEMENT IN MANY OF OUR PRISONS AND JAILS ARE NOT ONLY UNCONSTITUTIONAL; THEY ARE INHUMAN. ANOTHER COST OF DISCRIMINATION.

THERE IS NO DOUBT ABOUT IT. DISCRIMINATION AGAINST RACIAL MINORITIES AND WOMEN IS COSTLY. THERE IS ANOTHER GROUP OF PEOPLE IN THIS SOCIETY WHO ARE ALSO VICTIMS OF DISCRIMINATION. THERE ARE ESTIMATED TO BE FROM 20 TO 35 MILLION PEOPLE IN THIS NATION WITH DISABILITIES: 2 MILLION OF

THESE MAY BE CONSIDERED SEVERELY HANDICAPPED. AND YET THIS LARGE GROUP OF PEOPLE HAS BEEN ISOLATED AND SEGREGATED FROM THE MAINSTREAM OF SOCIETY. AT WHAT COST?

SENATOR RANDOLPH ANSWERED THAT QUESTION DURING THE 1978 SENATE DEBATE REGARDING CERTAIN AMENDMENTS TO THE REHABILITATION ACT OF 1973. HE SAID: "THERE WAS A DAY WHEN SERVICES TO HANDICAPPED PEOPLE MIGHT HAVE BEEN CONSIDERED COSTLY. TODAY, WE KNOW THAT IT IS THE FAILURE TO PROVIDE ADEQUATE SERVICES WHICH IS COSTLY. THERE ARE 2.8 MILLION PEOPLE TODAY WHO RECEIVE DISABILITY PAYMENTS UNDER SOCIAL SECURITY AND 2.2 MILLION DISABLED WHO ARE RECIPIENTS UNDER SSI. IT CAN COST FROM $6,000 TO $8,000 PER YEAR TO KEEP A MENTALLY RETARDED PERSON IN A SHELTERED WORKSHOP AND YET, WITH APPROPRIATE REHABILITATION SERVICES, SUCH A PERSON CAN BE TRAINED FOR PRODUCTIVE EMPLOYMENT AND BE TURNED INTO A TAXPAYER WITHIN AS LITTLE AS 8 MONTHS. THE REHABILITATION OF HANDICAPPED PERSONS IS NOT A PROGRAM WHICH COSTS MONEY. IT IS A PROGRAM WHICH MAKES MONEY. IT IS AN INVESTMENT IN THE FUTURE OF AMERICA WHICH TURNS WASTED LIVES INTO PRODUCTIVE INCOME FOR THE PERSON AND THE TREASURY."

AFFIRMATIVE ACTION BY THE FEDERAL GOVERNMENT HAS COME A LONG WAY IN A SHORT TIME. PRIOR TO THE 1960'S, MOST GOVERNMENT ACTIONS WHICH WERE CONCERNED WITH CIVIL RIGHTS SIMPLY INVOLVED THE ILLEGALITY OF DISCRIMINATION. THE CONCEPT OF PROVIDING A REMEDY FOR SUCH DISCRIMINATION HAS ONLY RECENTLY EVOLVED.

THE FIRST FORMAL GOVERNMENTAL ACTION EVER TAKEN ON THE MATTER OF RACIAL DISCRIMINATION IN EMPLOYMENT WAS EXECUTIVE ORDER 8802. THIS EXECUTIVE ORDER, WHICH WAS ISSUED BY PRESIDENT ROOSEVELT IN 1941, BARRED DISCRIMINATION IN THE EMPLOYMENT OF WORKERS IN DEFENSE INDUSTRIES OR GOVERNMENT BECAUSE OF RACE, CREED, COLOR OR NATIONAL ORIGIN.

ALTHOUGH PRESIDENT ROOSEVELT ISSUED A STRONGER EXECUTIVE ORDER TWO YEARS LATER IN 1943, IT WAS NOT UNTIL EARLY 1961 THAT A FIRST, TENTATIVE STEP TOWARD CONCRETE AFFIRMATIVE ACTION WAS TAKEN. THE EXECUTIVE ORDERS BEFORE 1961 FOCUSSED ON PASSIVE NONDISCRIMINATION. IN 1961, PRESIDENT KENNEDY ISSUED AN EXECUTIVE ORDER WHICH REQUIRED FEDERAL CONTRACTORS TO PURSUE ACTIVELY EQUAL EMPLOYMENT. IN FACT, THE ORDER DECLARED, "THE CONTRACTOR WILL TAKE AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT, WITHOUT REGARD TO THEIR RACE, CREED, COLOR, OR NATIONAL ORIGIN." (EXECUTIVE ORDER 10925).

AT LEAST PASSIVE NONDISCRIMINATION ON THE BASIS OF RACE WAS PRESIDENTIAL POLICY SINCE PRESIDENT ROOSEVELT; THE

FIRST MAJOR FEDERAL ACTION RELATING TO SEX INEQUALITY IN EMPLOYMENT DID NOT OCCUR UNTIL THE EQUAL PAY ACT OF 1963 WAS PASSED BY CONGRESS. THEN, IN 1964, TITLE VII OF THE CIVIL RIGHTS ACT WAS PASSED, PROHIBITING GENERAL EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEX AS WELL AS RACE.

COURT DECISIONS INTERPRETING TITLE VII HAVE FIRMLY ESTABLISHED THE PRINCIPLE OF AFFIRMATIVE ACTION. THE COURTS MOVED AWAY FROM SIMPLE RULINGS REQUIRING INDIVIDUAL COMPENSATION FOR INDIVIDUAL ACTS OF DISCRIMINATION. JUDICIAL DECISIONS CONTINUE TO PLAY A MAJOR ROLE IN THE DEVELOPMENT OF A NEW PUBLIC POLICY REQUIRING ACTIVE PARTICIPATION IN FORMULATING APPROPRIATE RELIEF BY THOSE FOUND GUILTY OF DISCRIMINATING ON THE BASIS OF RACE OR SEX.

DESPITE THE EQUAL OPPORTUNITY LAWS OF THE 1960'S AND THE DEVELOPMENT OF A FEDERAL CIVIL RIGHTS POLICY THAT EMPHASIZES AFFIRMATIVE ACTION, IT HAS BECOME INCREASINGLY CLEAR THAT WELL-INSTITUTIONALIZED DISCRIMINATORY BARRIERS PERSIST IN KEEPING OUT LARGE NUMBERS OF QUALIFIED WOMEN AND MEN. THE PAST EFFECTS OF INEQUALITY, THE DISPROPORTIONATE EFFECT OF A SHRINKING ECONOMY ON EMPLOYMENT RATES FOR BLACKS AND WOMEN, AND THE UNFORTUNATE EFFECT OF SPENDING MORE GOVERNMENT RESOURCES MONITORING COMPLIANCE THAN ACTUALLY ENFORCING SANCTIONS, HAVE ALL COMBINED TO PRESENT A GLOOMY PICTURE INDEED. THE PERSISTENT UNDERUTILIZATION OF VAST RESERVOIRS OF TALENTED WOMEN AND MINORITIES IS SIMPLY STAGGERING.

IT SEEMS TO ME THAT WE CANNOT, PARTICULARLY AFTER MIAMI, LOSE SIGHT OF THE REAL MEANING OF AFFIRMATIVE ACTION. WE MUST DEVOTE OURSELVES TO REMINDING AMERICA IN CONCRETE AND SPECIFIC TERMS OF THE STAGGERING COSTS OF CONTINUED DISCRIMINATION. WE MUST SHOUT OUT THE MANY WAYS IN WHICH THE PRESENT DISPARITIES BETWEEN BLACKS AND WHITES, BETWEEN MALES AND FEMALES, BETWEEN THE HANDICAPPED AND THOSE OF US WHO ARE PHYSICALLY WHOLE, BETWEEN HISPANICS AND ANGLOS, BETWEEN NATIVE AMERICANS AND THOSE WHOSE ANCESTORS CAME OVER ON THE MAYFLOWER, ARE THE RESULT OF PAST DISCRIMINATION WHICH IN MANY WAYS HAS BECOME INSTITUTIONALIZED, SUBTLE AND COVERT PRESENT DISCRIMINATION. PROGRAMS DESIGNED TO PROVIDE INCREASED OPPORTUNITY FOR MINORITIES AND WOMEN ARE LEGITIMATE RESPONSES TO THE LINGERING EFFECTS OF PAST DISCRIMINATION. WE MUST EDUCATE INSTITUTIONS AND CORPORATIONS WHO RESIST TAKING ANY ACTION. WE MUST SHOW THEM THE WAYS IN WHICH THEIR PRIOR PRACTICES WERE DISCRIMINATORY AND IN WHICH THEIR PRESENT PRACTICES REINFORCE THAT DISCRIMINATION.

THE AFFIRMATIVE ACTION POLICIES OF THIS ADMINISTRATION, COMPARED ESPECIALLY TO EARLY EQUAL

EMPLOYMENT EXECUTIVE ORDERS, ARE GEARED TOWARD ACTIVELY DISMANTLING THE MOST WIDESPREAD AND DEEPLY ENTRENCHED FORMS OF INSTITUTIONALIZED DISCRIMINATION. THE GOALS OF AFFIRMATIVE ACTION IN THIS ADMINISTRATION HAVE CENTERED ON CHANGING INSTITUTIONALIZED INEQUALITY. WE RECOGNIZE THAT PRESENT INEQUALITY IS THE OUTGROWTH OF DEEPLY IMBEDDED STRUCTURES OF PAST DISCRIMINATION.

WE HAVE SOUGHT IN THE PAST AND WILL CONTINUE TO SEEK WHERE APPROPRIATE THE FOLLOWING REMEDIES IN SUITS WHICH WE BRING: 1) A CESSATION OF DISCRIMINATORY PRACTICES; 2) RECRUITMENT PROGRAMS DESIGNED TO INCREASE POOLS OF ELIGIBLE MINORITIES AND WOMEN; 3) THE REPLACEMENT OF NON-JOB-RELATED WRITTEN AND OTHER TESTS WITH VALID DEVICES; 4) GOALS FOR INCREASED MINORITY AND FEMALE HIRING. COURTS HAVE HELD AND WE CONCUR THAT NUMERICAL HIRING AND PROMOTIONAL GOALS ARE A LAWFUL AND APPROPRIATE REMEDY TO CURE PAST DISCRIMINATORY PRACTICES WHICH EXCLUDED MINORITIES AND WOMEN FROM OBTAINING POSITIONS. NUMERICAL GOALS MAY BE THE ONLY PRACTICAL WAY OF MAKING MEANINGFUL PROGRESS TOWARD EQUAL OPPORTUNITY;

5) BACK PAY FOR VICTIMS OF PAST DISCRIMINATION.

AND WE MUST BE CREATIVE. JUST AS IN EMPLOYMENT CASES WHERE AFFIRMATIVE ACTION PLANS ARE WELL ESTABLISHED TO REMEDY PAST DISCRIMINATORY PRACTICES, SO TOO IN SCHOOL CASES WHERE A CONSTITUTIONAL VIOLATION IS ESTABLISHED, A SCHOOL BOARD IS OBLIGATED TO REMEDY THE CONTINUING EFFECTS OF THAT VIOLATION. AND THE SUPREME COURT IN CITY OF ROME V. UNITED STATES RECENTLY ACKNOWLEDGED THAT CONGRESS WAS ACTING APPROPRIATELY WHEN IT APPLIED AN AFFIRMATIVE ACTION ARGUMENT TO THE EXTENSION OF THE VOTING RIGHTS ACT. CONSIDERING THE LOW BLACK VOTER REGISTRATION IN COVERED JURISDICTIONS, THE ABSENCE OF MINORITY ELECTED OFFICIALS IN STATE-WIDE OFFICE, AND THE NEED TO PRESERVE THE MODEST PROGRESS OF THE LAST FEW YEARS, AN AFFIRMATIVE REQUIREMENT THAT VOTING CHANGES IN COVERED JURISDICTIONS BE PRECLEARED WAS STILL NECESSARY TO ERADICATE THE LASTING EFFECTS OF PURPOSEFUL DISCRIMINATION. SIMILARLY IN THE AREA OF METROPOLITAN RELIEF WHERE HOUSING POLICIES AFFECT SCHOOL SEGREGATION, WE NEED TO DEVELOP FACTUAL RECORDS THAT SUPPORT INTERDISTRICT

HOUSING AND SCHOOL RELIEF AS AN AFFIRMATIVE MEANS OF REMEDYING PAST DISCRIMINATION.

I AM NOT HERE TO SUGGEST THAT AFFIRMATIVE ACTION IS THE ANSWER TO MIAMI. OR THAT THE FEDERAL GOVERNMENT HAS AN ANSWER FOR MIAMI. I DO BELIEVE, HOWEVER, THAT BY EDUCATING AMERICA TO THE PERVASIVE LIFE-THREATENING COSTS OF DISCRIMINATION, WE WILL BE WORKING TOGETHER IN THE RIGHT DIRECTION.

DOJ-1980-05